

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Tonya Gail McCrae**

Case No. 13-80568

Chapter 13

Social Security No. xxx-xx-2577

Address: 809 Beebe Drive, Durham NC 27713-

Debtor

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**MOTION TO AVOID JUDICIAL LIEN**

**NOW COMES** the Debtor above-named, through counsel, who respectfully moves this Court as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the Court has jurisdiction pursuant to 28 U.S.C. § 151, 157 and 1334.
2. The Debtor files this motion to avoid a judicial lien pursuant to 11 U.S.C. § 522(f)(1)(A) and N.C.G.S. § 1C-1601.
3. The Debtor filed this case on April 30, 2013.
4. The Debtor is now, and has been at all times since this case was filed, the owner of real property (hereinafter "said property") in the Registry of Deeds for the County of Durham, North Carolina, which property may also now or formerly be known as 809 Beebe Drive Durham NC 27713.
5. As of the date this case was filed, the fair market value of said property was \$177,204.00.
6. As of the date this case was filed, said property was the residence of the Debtor, and the Debtor has claimed and was entitled to claim an exemption in said property pursuant to N.C.G.S. § 1C-1601(a)(1) of not more than \$35,000.00.
7. That no objection has been filed regarding the exemptions claimed by the Debtor.
8. That LVNV FUNDING, LLC was listed as a creditor in the schedules filed in this case.
9. That said creditor holds a judicial lien which was recorded in Durham County, as referenced in file number 09CVD5346, in the amount of approximately \$3,007.70, plus interest to accrue at the rate of 8.00 percent per annum. That, upon information and belief, the balance owing to said creditor concerning said judicial lien, together with interest, as of the date this case was filed, was approximately \$3,007.70.

10. That said judicial lien constitutes a lien upon said property.
11. Upon information and belief, as of the date this case was filed, the only other liens against the property recorded in Durham County were the following:

Name of Creditor Holding Lien	Type of Lien	Payoff Amount of Lien
Bank Of America Home Loans	Deed of Trust	\$201,000.00
Total of Other Liens:		\$201,000.00

12. That since the sum of the amount of the said judicial lien held by LVNV FUNDING, LLC, the total amount of all other said liens on the said real property, and the amount of the exemption that the Debtor were entitled to claim if there were no liens on the property, exceeds the value of the real property (or, in the event that the Debtor owns less than a 100% interest in said real property, the value of the Debtor's interest in said property) by \$61,803.70, the said judicial lien impairs an exemption of the Debtor, and, therefore, pursuant to U.S.C. § 522(f)(2)(A), the judicial lien is avoidable to the full extent of said judicial lien.

**WHEREFORE**, the Debtor prays that the Court enter an Order as follows:

1. Avoiding the judicial lien held by LVNV FUNDING, LLC to the full extent of said judicial lien; and
2. Stating that said avoidance is to be of no force and effect outside of this Chapter 13 bankruptcy proceeding unless, and until, the Debtor obtains a discharge; and
3. Granting such other and further relief as to the Court may seem just and proper.

Dated: May 29, 2013

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

s/ Edward Boltz

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Edward Boltz

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**CERTIFICATE OF SERVICE**

I, Melissa Weaver, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on May 29, 2013, I served copies of the foregoing **MOTION TO AVOID JUDICIAL LIEN** by **certified mail, return receipt requested**, upon the following parties:

LVNV FUNDING, LLC

Attn: Managing Agent

P O Box 740281

Houston, TX 77274-

and by **regular first-class U.S. mail**, addressed to the following parties:

Smith Debnam Narron Drake Saintsing & Myers, Llp

Attorney for LVNV FUNDING, LLC

P O Box 26268

Raleigh, NC 27611-

Tonya Gail Mccrae

809 Beebe Drive,

Durham NC 27713-

and by **automatic electronic noticing** upon the following parties:

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

s/ Melissa Weaver

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Melissa Weaver